

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

HARRY SAMUEL

Plaintiff,

v.

THOMAS CARROLL, (WARDEN),
LT. PORTER, COUNSELOR
KRAMER, CORRECTIONAL
OFFICER ROBERT YOUNG, the
I.B.C.C. (CLASSIFICATION
COMMITTEE), DENTAL SERVICE,
CORRECTIONAL MEDICAL
SERVICES, INC., and FIRST
CORRECTIONAL MEDICAL,

Defendants.

C.A. No. 05-037-SLR

TRIAL BY JURY DEMANDED

**MOTION OF DEFENDANT, CORRECTIONAL MEDICAL SERVICES, INC., FOR
ENTRY OF FINAL JUDGMENT PURSUANT TO FEDERAL RULE OF CIVIL
PROCEDURE 54(b)**

Defendant, Correctional Medical Services, Inc., by and through its attorneys, moves this Court to enter the attached Order, entering final judgment in this action and states as follows:

1. On December 4, 2006, the Court issued a Memorandum Opinion and Order in response to Correctional Medical Services Inc. and the State defendants' Motions to Dismiss. D.I. 100 & 101. A copy of the Court's Memorandum Opinion and Order of December 4, 2006, is attached hereto as Exhibit "A".

2. In the Court's Opinion and Order of December 4, 2006, the Court held, with respect to plaintiff's claim regarding delay in dental treatment, that liability did not lie with Correctional Medical Services, Inc. Therefore, the Court granted Correctional Medical Services,

Inc.'s Motion to Dismiss. On December 8, 2006, plaintiff filed a Motion for Reconsideration, but only as to the Court's decision dismissing the State defendants. D.I. 103.

3. Pursuant to Federal Rule of Civil Procedure 54(b), Correctional Medical Services, Inc. moves this Honorable Court to enter final judgment in favor of Correctional Medical Services, Inc. on the Court's prior decision on Correctional Medical Services, Inc.'s Motion to Dismiss.

4. Rule 54(b) entitled "[j]udgment upon multiple claims or involving multiple parties", provides:

When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the Court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.

5. There is no just reason to delay the entry of a final judgment as to Correctional Medical Services, Inc. in the present case. Correctional Medical Services, Inc. was dismissed because liability did not lie with Correctional Medical Services, Inc. Entry of a final judgment as to Correctional Medical Services, Inc. would not hinder the progression of plaintiff's still active case.

WHEREFORE, defendant, Correctional Medical Services, Inc., respectfully moves this Honorable Court to enter the attached Order, expressly determining that there is no just reason for delay and expressly directing entry of final judgment in favor of defendant, Correctional Medical Services, Inc.

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

BY : /s/ Kevin J. Connors

KEVIN J. CONNORS, ESQ.

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Attorney for Defendant,

Correctional Medical Services, Inc.

Date: May 11, 2007

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